

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHRISTOPHER MARTINEZ, an
individual,

Plaintiff,

v.

SPECIALIZED LOAN SERVICING, LLC,
a limited liability company;
SECURED FUNDING CORP., a
corporation; and DOES 1-50,
inclusive,

Defendants.

No. 2:24-cv-1387 WBS AC

ORDER RE: MOTION TO DISMISS

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Christopher Martinez ("plaintiff") brought this action against Specialized Loan Servicing, LLC ("defendant"), alleging that it wrongfully foreclosed on his residence at 7096 Ludlow Dr., Roseville, CA 95747 ("the property"). (First Am. Compl. ("FAC") (Docket No. 22).) Defendant now moves to dismiss. (Docket No. 27.)

On January 23, 2001, plaintiff and his wife purchased

1 the property via grant deed. (FAC ¶ 15.) On November 7, 2006,
2 plaintiff used his equity in the property to obtain a home equity
3 line of credit from co-defendant Secured Funding Corporation for
4 \$111,800.00.¹ (Id. ¶ 16.) Defendant services this loan. (Id.)
5 On May 6, 2008, plaintiff filed for chapter 7 bankruptcy, which
6 was discharged on August 11, 2008. (Id. ¶¶ 17-18.) Plaintiff
7 believed the bankruptcy extinguished his loan obligations to
8 defendants. (Id. ¶ 18.) Plaintiff stopped receiving monthly
9 statements on the loan for more than 15 years. (Id.)

10 On June 22, 2023, a notice of default was recorded on
11 the property and stated that plaintiff owed \$157,088 on the loan.
12 (Id. ¶ 20.) Between June 22, 2023, and July 26, 2023, plaintiff
13 attempted to cure the default informally by contacting defendant.
14 (Id. ¶¶ 23-24.) Defendant then offered to reinstate the loan for
15 \$159,596.47, which included about \$40,000 in additional interest
16 payments, and it gave plaintiff a week to consider the offer.
17 (Id. ¶¶ 24-25.) Despite attempting to refinance the loan,
18 plaintiff did not accept defendant's offer. (Id. ¶¶ 25-26.) On
19 January 31, 2024, a notice of sale was recorded on the property,
20 which precipitated this litigation. (Id. ¶ 27.)

21 Defendant moves to dismiss on the ground that plaintiff
22 "fails to state a claim upon which relief can be granted." See
23 Fed. R. Civ. P. 12(b)(6) (cleaned up).² Plaintiff brings seven

24
25 ¹ Co-defendant Secured Funding Corporation has not yet
appeared in the matter.

26
27 ² Defendant also moves to dismiss on the ground that
plaintiff failed to join an indispensable party under Federal
Rules of Civil Procedure 12(b)(7) and 19(a)-(b). (See Docket
28 No. 27-1 at 16.) The court need not reach the issue here, and it

1 claims against defendant for: (1) violation of the federal Truth
2 in Lending Act, 15 U.S.C. § 1637; (2) breach of contract on a
3 third-party beneficiary theory; (3) breach of the implied
4 covenant of good faith and fair dealing; (4) violation of the
5 Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C.
6 §§ 1692e(A), 1692f(1); (5) violation of California Civil Code
7 section 2924.17; (6) violation of the Unfair Competition Law
8 ("UCL"), Cal. Bus. & Prof. Code § 17200; and (7) declaratory
9 relief. (See FAC ¶¶ 31-75.)

10 Plaintiff concedes that the first, second, third,
11 fifth, and seventh claims should be dismissed and requests leave
12 to amend. (See Docket No. 29 at 8-12.) Accordingly, those
13 claims will be dismissed.³

14 Plaintiff argues that the fourth claim should not be
15 dismissed because the FDCPA applies to defendant. (See Docket
16 No. 29 at 12-13.) To support his position, plaintiff cites
17 several cases which are no longer good law. See, e.g., Natividad
18 v. Wells Fargo Bank, N.A., No. 3:12-cv-03646, 2013 WL 2299601, at
19 *3-11 (N.D. Cal. May 24, 2013), abrogated by Obduskey v. McCarthy
20 & Holthus LLP, 586 U.S. 466, 474-79 (2019); Distor v. U.S. Bank
21 NA, No. C 09-02086, 2009 WL 3429700, at *3-5 (N.D. Cal. Oct. 22,
22 2009), overruled by Beaver v. Tarsadia Hotels, 816 F.3d 1170,

23
24 expresses no opinion on whether all indispensable parties have
25 been joined.

26 ³ The court notes that declaratory relief is a remedy,
27 not an independent claim, under California law. See A.B.
28 Concrete Coating Inc. v. Wells Fargo Bank, Nat'l Ass'n, 491 F.
Supp. 3d 727, 737-38 (E.D. Cal. 2020) (Brennan, J.) (citing Hood
v. Superior Ct., 33 Cal. App. 4th 319, 323-24 (2d Dist. 1995)).

1 1180-81 & n.5 (9th Cir. 2016). The issue with plaintiff's
2 authorities is that they do not account for the Supreme Court's
3 holding in Obduskey that non-judicial foreclosure does not fall
4 within the ambit of the FDCPA. See 586 U.S. at 474-79.
5 Subsequently, the Ninth Circuit made it clear that "the
6 enforcement of a security interest does not entail an attempt to
7 collect money from the debtor." Barnes v. Routh Crabtree Olsen
8 PC, 963 F.3d 993, 997-98 (9th Cir. 2020) (citing Obduskey, 586
9 U.S. at 474-79). Thus, the FDCPA does not apply to the
10 foreclosure at issue here, and the fourth claim will be
11 dismissed.

12 Plaintiff's counsel argued in conclusory fashion that
13 the fourth claim should not be dismissed on the ground that
14 defendant's reinstatement offer under California Civil Code
15 section 2924c is still actionable pursuant to § 1692f(1) of the
16 FDCPA even after Obduskey.⁴ (See also FAC ¶¶ 24-25, 51-53
17 (alleging reinstatement offer violates the FDCPA).) Plaintiff
18 has not provided, nor is the court aware of, any authority
19 indicating that defendant making such a reinstatement offer, much
20 less at plaintiff's own behest, violates any part of the FDCPA.

21 Plaintiff's sixth claim alleges defendant violated the
22 UCL, which "proscribes the use of any 'unlawful, unfair or
23 fraudulent business act or practice.'" Beaver, 816 F.3d at 1177-

24
25 ⁴ The Court in Obduskey only excepted from its holding
26 one isolated subsection of the FDCPA: § 1692f(6), which uses a
27 unique definition of "debt collector" distinct from the
28 definition applicable to § 1692f(1). See 586 U.S. at 468-69,
473-79. As a result, Obduskey and the Ninth Circuit's subsequent
decision in Barnes still apply to plaintiff's fourth claim
regarding defendant's reinstatement offer.

1 78 (quoting Cal. Bus. & Prof. Code § 17200). A claim arising
2 under the UCL requires “that plaintiffs suffered an economic
3 injury and that the alleged injury was a result of the
4 violations.” Shupe v. Nationstar Mortg. LLC, 231 F. Supp. 3d
5 597, 605-06 (E.D. Cal. 2017) (England, J.) (cleaned up) (citing
6 Kwikset Corp. v. Superior Ct., 51 Cal. 4th 310, 321-22 (2011)).
7 In Shupe, this court dismissed a UCL plaintiff’s claim for lack
8 of statutory standing where the complaint did not allege that a
9 nonjudicial foreclosure sale was still pending. See id. Here,
10 plaintiff gives no indication that the foreclosure sale is still
11 pending or that his house has been sold yet. (See FAC ¶¶ 13-20,
12 23-27, 64-70.) Plaintiff has therefore not alleged a cognizable
13 economic injury under the UCL.


14 Even if plaintiff had established statutory standing,
15 he still fails to state a violation of the UCL. Plaintiff
16 alleges that defendant violated the “unfair” and “unlawful”
17 prongs of the UCL. (Id. ¶¶ 65-67.) The “unlawful” prong
18 “borrows violations of other laws and treats them as unlawful
19 practices that the unfair competition law makes independently
20 actionable.” Beaver, 816 F.3d at 1177-78. Because each of
21 plaintiff’s other claims will be dismissed, the UCL fails to the
22 extent it is asserted under the “unlawful” prong. Moreover,
23 plaintiff provides no authority indicating that he states a claim
24 under the UCL’s “unfair” prong. (See Docket No. 29 at 14-15.)
25 Accordingly, the sixth claim will be dismissed.

26 Federal Rule of Civil Procedure 15(a)(2) directs the
27 court to “freely give leave [to amend the complaint] when justice
28 so requires.” Fed. R. Civ. P. 15(a)(2). “[T]his policy is to be

1 applied with extreme liberality." Herring Networks, Inc. v.
2 Maddow, 8 F.4th 1148, 1160-61 (9th Cir. 2021). Accordingly, the
3 court will give plaintiff leave to amend his complaint.

4 IT IS THEREFORE ORDERED that defendant's motion to
5 dismiss (Docket No. 27) be, and the same hereby is, GRANTED.
6 Plaintiff has twenty-one (21) days from the date of this Order to
7 file an amended complaint, if he can do so consistent with this
8 Order.

9 Dated: April 30, 2025


10 **WILLIAM B. SHUBB**
11 **UNITED STATES DISTRICT JUDGE**